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Hon. Judge Marco A. Hernandez

Attorneys for Software Technology Group, Inc.

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

RAY KLEIN, INC., dba PROFESSIONAL CREDIT SERVICE,

Plaintiff,

v.

OVIO TECHNOLOGIES, INC.,

Defendant and Third-Party Plaintiff,

v.

SOFTWARE TECHNOLOGY GROUP, INC., an Oregon corporation,

Third-Party Defendant.

Case No. 3:19-cv-02090-HZ

**THIRD-PARTY DEFENDANT
SOFTWARE TECHNOLOGY GROUP,
INC.'S ANSWER AND AFFIRMATIVE
DEFENSES TO THIRD-PARTY
COMPLAINT**

DEMAND FOR JURY TRIAL

Software Technology Group, Inc. (STG) answers oVio Technologies, Inc.'s (oVio) third-party complaint as follows:

PARTIES

1. STG admits paragraph 1.

2. STG admits paragraph 2.

JURISDICTION AND VENUE

3. STG admits paragraph 3.

4. STG admits paragraph 4.

5. As to paragraph 5, STG admits only that venue is appropriate in this court.

FIRST CLAIM OF RELIEF

6. As to paragraph 6, STG admits only that oVio was involved in the development, production, and manufacture of a robot designed to scan and manipulate imagery, and that oVio referred to the image manipulation software as “the Workshop.” Otherwise denied.

7. As to paragraph 7, STG asserts that the parties agreed that oVio would pay STG in money and stock for services rendered. oVio failed to pay STG in cash and stock in a timely manner and in full for work performed by STG. STG otherwise admits paragraph 7.

8. As to paragraph 8, STG admits only that STG completed two projects for oVio, and that oVio paid STG approximately \$70,000 in cash and approximately \$3,600 in stock. Otherwise denied.

9. As to paragraph 9, STG admits only that oVio retained it to work on a project involving the imaging robot. Otherwise denied.

10. STG denies paragraph 10.

11. STG denies paragraph 11.

12. STG denies paragraph 12.

13. STG denies paragraph 13.

14. STG denies paragraph 14.

15. STG denies paragraph 15.

16. STG lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 16 and, therefore, denies the allegations.

17. STG denies paragraph 17.

18. Unless otherwise admitted or alleged above, STG denies every allegation of the third-party complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

19. The third-party complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

20. The third-party complaint is barred by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

(Failure to Mitigate)

21. oVio failed to mitigate its damages.

FOURTH AFFIRMATIVE DEFENSE

(Avoidable Consequences)

22. oVio failed to utilize or exhaust, in good faith, reasonable grievance procedures and, therefore, failed to avoid the consequences of STG's alleged conduct.

FIFTH AFFIRMATIVE DEFENSE

(Contributory Negligence)

23. oVio's damages, if any, were caused or contribute to by its own fault.

SIXTH AFFIRMATIVE DEFENSE

(Waiver, laches, and/or estoppel)

24. oVio's claims may be barred by the doctrines of waiver, laches, and/or estoppel.

SEVENTH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

25. oVio's recovery of any amount from STG would be unjust enrichment in light of oVio's breach of contract and breach of good faith and fair dealing.

EIGHTH AFFIRMATIVE DEFENSE

(Unclean Hands)

26. oVio's claim for relief is barred in whole or in part by the doctrine of unclean hands.

NINTH AFFIRMATIVE DEFENSE

(Speculative Damages)

27. oVio is precluded from recovering the damages alleged in the third-party complaint because those damages are too vague, uncertain, and speculative to permit recovery.

DEMAND FOR JURY TRIAL

28. STG requests a jury trial.

WHEREFORE, having fully answered oVio's third-party complaint and stated its affirmative defenses, STG requests judgment in its favor, dismissal of oVio's third-party claims with prejudice, and an award of STG's costs and disbursements incurred herein.

DATED this 5th day of May, 2020.

s/ David C. Campbell

LEWIS BRISBOIS BISGAARD & SMITH LLP

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Attorneys for Ovio Technologies, Inc.

CERTIFICATE OF SERVICE

I certify that I served the foregoing **THIRD-PARTY DEFENDANT SOFTWARE TECHNOLOGY GROUP'S ANSWER AND AFFIRMATIVE DEFENSES TO THIRD-PARTY COMPLAINT** on the following attorneys by the method indicated below on the 5th day of May, 2020:

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